

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-1285
)	(RCL)
BRUCE BABBITT, Secretary of)	
the Interior, et al.)	
)	
)	
Defendants.)	
_____)	

DEFENDANTS' THIRD PHASE II MOTION FOR PARTIAL SUMMARY JUDGMENT
(RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

Between 1817 and 1951, the Defendants were subject to and complied with several statutes that required the routine audit of all credits and disbursements of Indian disbursing agents who handled individual Indian monies. Because Defendants complied with the statutes defining their accounting obligations for the period 1817 to 1951, Plaintiffs are not now entitled to an accounting or reconciliation that requires the Defendants and this Court to revisit transactions settled in accordance with law. For these reasons and for the reasons set forth in the accompanying Memorandum, the Defendants move for summary judgment that neither the American Indian Trust Fund Management Reform Act of 1994 nor any other law requires Defendants to account today for transactions that occurred in individual Indian money accounts prior to 1951.

Defendants have submitted supporting exhibits, three of which have been submitted under seal in accordance with paragraph 4 of the Protective Order entered by this Court on November 27, 1996.

A proposed order is also attached.

Dated: November 20, 2000

Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 19, 2000, a copy of the foregoing **Defendants' Third Phase II Motion for Partial Summary Judgment (Re: Settlement of Accounts by Treasury and GAO)**, supporting memorandum, statement of undisputed facts, and proposed order were served on the following by placing a copy in the United States mail, first-class postage prepaid, addressed as follows:

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Paula Clinedinst

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MEMORANDUM IN SUPPORT OF
DEFENDANTS' THIRD PHASE II MOTION FOR PARTIAL SUMMARY JUDGMENT
(RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

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* A complete copy of this transcript was submitted as Exhibit 4 to the Defendants' First Phase II Motion for Summary Judgment.

- Exhibit 15 Selected Excerpts from the Annual Reports of the Secretary of the Treasury and Correspondence of the Department of the Treasury
- Exhibit 16 Business and Accounting Methods, Indian Bureau, Report to the Joint Commission of the Congress of the United States, 63d Cong. 3d Sess. (1915)
- Exhibit 17 Letter from Phillip Brooks to Dennis Gingold (May 26, 2000)
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**References to “Statutory Compilation” are to Exhibits 20 and 21 to the Defendants’ First Phase II Motion for Summary Judgment as supplemented by Exhibit A to the Defendants’ Second Phase II Motion for Summary Judgment. Additional relevant statutes are attached as Exhibit 4.

American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239 (Oct. 25, 1994) (codified as amended at 25 U.S.C. §§ 161a, 162a, 4001, 4001, 4001 note, 4011-4012, 4021-4029, 4042-4046, 4061)	1
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This is the third in a series of preliminary motions aimed at defining the scope of Phase II of this bifurcated action. In Phase II, Plaintiffs ask this Court to conduct an expansive common-law style accounting for each and every transaction that has ever occurred in more than 300,000 individual Indian money (“IIM”) accounts since the inception of the allotment system in approximately 1887. Although Defendants have demonstrated already a number of reasons why this is not so, we now begin to address why, even assuming Plaintiffs’ cause of action could be entertained in this Court, it could not be the common-law action envisioned by Plaintiffs.¹

In this Motion, Defendants demonstrate that even assuming the existence of a cause of action for an accounting, Plaintiffs would not be entitled to an accounting or reconciliation of transactions that have already been reconciled and settled in accordance with existing law. Specifically, between 1817 and 1951, governing law required each disbursing agent to submit his accounts, including those relating

¹As demonstrated in Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Claims for an Historical Accounting (“First Phase II Motion for Partial Summary Judgment”), the American Indian Trust Fund Management Reform Act of 1994 (“the 1994 Reform Act”), does not require an historical accounting of the IIM accounts beyond the analysis necessary to meet the prospective obligations to report accurate account information to beneficiaries. See 25 U.S.C. §§ 162a(d), 4011. That motion also shows that Plaintiffs’ claim to have balances “restated” or “corrected” to reflect amounts that should have been credited or earned is beyond this Court’s jurisdiction. Further, as demonstrated in the Defendants’ Second Phase II Motion for Partial Summary Judgment (Re: Funds Not Invested or Deposited Pursuant to the Act of June 24, 1938), the 1994 Reform Act requires Defendants to account for or reconcile only funds “held in trust . . . and deposited or invested pursuant to the Act of June 24, 1938.” See 25 U.S.C. § 4011. Based on the plain language of the statute, Defendants, therefore, are not required to account for funds never received by the United States, such as funds paid directly to an allotment owner. Finally, as demonstrated in the Defendants’ appeal filed with the U.S. Court of Appeals for the District of Columbia, Plaintiffs do not have a right to an accounting performed in this Court. Rather, Plaintiffs may only invoke the jurisdiction of this Court to review Defendants’ decisions regarding an historical review of accounts pursuant to the Administrative Procedure Act (“APA”).

to IIM accounts, for settlement.² Settlement consisted of a double audit – one by the Indian Office in Washington, D.C. and then by a second agency (the Department of the Treasury (“Treasury”) until 1921 and the General Accounting Office (“GAO”) between 1921 and 1951). This settlement process provided a regular and specific procedure for checking the accuracy of accounts maintained on behalf of individual Indians and was the only accounting or reconciliation required by law at the time. Thus, under any circumstances, Plaintiffs are not entitled to an accounting or reconciliation that revisits transactions subject to this settlement process.

Defendants intend to file further motions for partial summary judgment addressing other legal questions associated with the scope and nature of any accounting available in this action. For instance, Defendants intend to file a motion for partial summary judgment demonstrating that, if the Court finds that it can order an accounting to be performed in this action rather than in an administrative proceeding, the only relief available to the class is a statement of the pool-level balances and determination of the ownership of the IIM funds currently held in special deposit accounts. In addition, Defendants intend to file a motion for partial summary judgment demonstrating that certain of Plaintiffs’ claims are barred by the statute of limitations or the doctrine of laches.

While resolution of any of the above-mentioned appeals or motions in favor of Defendants may obviate the need for ruling on this Motion for Summary Judgment, the Plaintiffs’ continued efforts to assert a claim for an accounting back to 1887 have significant implications for the time and expense

²Disbursing agents were bonded officials of federal agencies, such as the Indian disbursing agents at BIA, who were authorized to receive and disburse monies on behalf of federal agencies. See Decl. of Frank Sapienza ¶¶ 8, 18 (Sept. 18, 2000) (Exhibit 7).

necessary to conclude discovery and prepare for trial. Early resolution of the question of the temporal scope of any accounting required in this action would significantly reduce the cost and complexity of the discovery and expert work for all parties involved in this litigation. For these reasons, and the reasons set forth below, Defendants now seek summary judgment that neither the 1994 Reform Act nor any other law requires Defendants to account for transactions in IIM accounts prior to 1951.

I. PLAINTIFFS' CONTENTIONS

Plaintiffs contend that they are entitled to an accounting that provides a

statement of balances, including without limitation any funds, wherever and whenever held, that should stand to the credit of the IIM Trust and each individual Indian trust beneficiary from that point in time the United States first assumed trust responsibility for management of individual Indian lands and first owed a specific trust responsibility to each such person entitled to receive revenues generated from such trust lands

Plaintiffs' Supplemental Contention Answers on Behalf of Class to Defendants' Fourth Set of Interrogatories, Requests for Admission and Requests for Production Dated October 15, 1999, Response to Interrogatory 1 (Jan. 31, 2000) (Exhibit 1) (emphasis added). Thus, Plaintiffs seek to establish what balances "should" have been at all points since the IIM trust system began, and what balances should be now, for both the IIM trust as a whole and for each individual Indian trust beneficiary. According to Plaintiffs, the documents necessary to perform the accounting they seek are "[w]hatever original source documents or other equivalent documents must be examined to establish, verify and validate with sufficient certainty correct trust balances" Id. at Response to Interrogatory No. 2. This verification and validation must, according to Plaintiffs, be in accordance within "the meaning of the term 'accounting' at common law." Id.

Because their asserted right to an accounting goes to "verifying balances . . . from" the

beginning of the trust, Plaintiffs essentially demand a reconciliation of all account transactions that have occurred since the inception of the IIM trust to arrive at a “restatement” or “correction” of current account balances. As Plaintiffs’ counsel recently stated their position:

The source documents with regard to the trust assets are critical to arrive at a reasonably precise estimate from Plaintiffs' perspective because we believe that every document and every dollar must be accounted for by the Defendants going back to 1887.

Transcript of Hearing, Cobell v. Babbitt, 66-67 (Feb. 29, 2000) (Exhibit 2). Plaintiffs’ claims, however, are inconsistent with applicable law and ignore the undisputed facts.

II. FACTUAL BACKGROUND

A. In 1817, Congress Established the Accounting Obligations for the United States

To understand why Plaintiffs’ claims must fail, it is necessary to understand some of the history associated with the accounting requirements applicable to individual Indian monies prior to 1951. This history must necessarily begin with the principle established in our Constitution that Congress has plenary power to determine the policies and scope of the government’s relationship with Indians. See U.S. Const. art. 1, § 8, cl. 3.

From 1789 until 1871, Congress directed and the Executive Branch implemented a policy of negotiating treaties with Indian tribes in order to resolve conflicts with and obtain lands from the tribes. See, e.g., Francis Paul Prucha, Great Father, I, at 168-73 (University of Nebraska Press 1984) (Exhibit 3). As a result of these treaties, over the decades, the United States began to supervise increasing amounts of tribal trust funds.

Accounting for these tribal funds was governed by a statute which had been passed in 1817.

That statute, entitled “An Act to Provide for the Prompt Settlement of Public Accounts,” established a system of accounting in which “all claims and demands whatever by the United States or against them, and all accounts whatever, in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Treasury Department.” Chap. 45, Sec. 2, 3 Stat. 366 (Mar. 3, 1817) (Exhibit 4, Tab 3). The act established a number of auditors and comptrollers, each of whom was assigned a specific area of supervision. One auditor was assigned to “receive all accounts . . . arising out of Indian affairs, and examine the same, and thereafter certify the balance, and transmit the accounts, with the vouchers and certificate, to the first comptroller for his decision thereon” Id. Sec. 4, 3 Stat. at 366. A comptroller had the “duty . . . to examine all accounts settled by the [auditor in charge of accounts arising out of Indian affairs] and certify the balances arising thereon” Id. Sec. 7, 3 Stat. at 367.

Secretary of War Calhoun created the Bureau of Indian Affairs (“BIA”) by order of March 11, 1824. See Federal Indian Law at 217 (1958) (Exhibit 21). In 1834, Congress formally organized that office into the “Indian department,” which eventually again became the BIA.³ In the same statute, Congress provided that funds handled by BIA would be accounted for in accordance with the Act of March 3, 1817. Specifically, the act required officers of the BIA to “settle their accounts, annually, at the War Department, on the first day of October; and copies of the same shall be laid, annually, before Congress at the commencement of the ensuing session, by the proper accounting officers. . . .” Chap. 162, 4 Stat. 737-38 (June 30, 1834) (Statutory Compilation, Tab 4). In addition, Congress provided

³The name of the office charged with Indian affairs has evolved. For the sake of simplicity, this brief will use the name BIA to refer to that office in all its incarnations.

that “the President of the United States shall be, and is hereby, authorized to prescribe such rules and regulations as he may think fit, . . . for the settlement of the accounts of the [BIA].” *Id.* Sec. 17, 4 Stat. at 738.

In March 1849, Congress created the Department of the Interior (“Interior”) and placed both BIA and public land matters under the Secretary of the Interior. Chap. 108, 9 Stat. 395 (Mar. 3, 1849) (Exhibit 4, Tab 6A). The Act gave the Secretary of the Interior supervisory control over Indian affairs, “subject to the same adjustment or control” exercised by the auditors and comptrollers at Treasury pursuant to the Act of March 3, 1817. *Id.* Sec. 5, 9 Stat. at 395.

In 1868, the Act of March 3, 1817 was amended to address disputes among the executive agencies. Specifically, before 1868 there had been efforts by various executive agencies to challenge or change the balances certified by the auditors and comptrollers in accordance with the Act of March 3, 1817. Congress passed the Act of March 30, 1868, “apparently to settle conclusively that long standing controversy between executive officers and to prevent the interferences of others in the settlement of accounts by the accounting officers.” In the Matter of Maj. John S. Billings, 23 Ct. Cl. 166, 180 (Ct. Cl. 1888). Accordingly, Congress provided that:

The balances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts.³

³ As discussed below, the provision that the accounts could be reviewed by the “proper courts” was authorization to review the audit performed by Treasury or GAO, not a creation of a right to a new or different style of accounting. Moreover, such claims would be subject to the statute of limitations.

Chap. 36, 15 Stat. L. 54 (Mar. 30, 1868) (Exhibit 4, Tab 8A).

B. By 1897, Interior Had Begun to Hold Individual Indian Monies in Trust

Congress' concentration on relationships between the tribes and the federal government meant that Interior rarely held trust funds on behalf of individuals before 1871.⁴ Beginning in 1871, however, federal Indian policy shifted from dealing with the tribal government to dealing directly with individual Indians. As set forth more fully in the Defendants' Second Phase II Motion for Summary Judgment, the allotment of land to individual Indians represented a fundamental aspect of the shifting federal policy. Allotment of reservations occurred until 1934 and leasing of allotments began in earnest in the early part of the Twentieth Century. See Memorandum in Support of Defendants' Second Phase II Motion for Summary Judgment at 4-5 (May 12, 2000); Chap. 576, Sec. 1, 48 Stat. 984 (June 18, 1934) (Exhibit 4, Tab 55A) ("hereafter, no land of any Indian reservation . . . shall be allotted in severalty to any Indian.").

By November 1897, Indian agents were handling increasing amounts of money for individual Indians. Annual Report of the Commissioner of Indian Affairs, 44-45 (1897) (Exhibit 5, Tab 1). These funds came from a variety of sources, including the sale and lease of allotments. During the early

See infra note 13.

⁴Apparently, Interior did hold some funds of individual Indians prior to 1871. For instance, in 1862, Congress directed the Secretary of the Interior to "cause settlements to be made with all persons appointed by the Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found to be due to such incompetent or orphan Indians to be returned to the Treasury and all moneys so returned shall bear interest at the rate of 6 percent per annum, until paid by order of the Secretary of the Interior to those entitled to the same. . . ." Chap. 135, Sec. 6, 12 Stat. 512, 529 (July 5, 1862) (Statutory Compilation, Tab 7A).

1900s, agents also began receiving additional funds from other sources as well. These included, distributions of tribal trust funds to individual members of the tribes (commonly known as per capita payments). See, e.g., Report of the Commissioner of Indian Affairs, 70-76 (Sept. 30, 1908) (Exhibit 5, Tab 3); Chap. 2523, Sec. 1, 34 Stat. 1221 (Mar. 2, 1907) (Statutory Compilation, Tab 37). In addition, by at least 1914, Interior employees were receiving funds “voluntarily placed by [individuals] in the hands of the officer for safe-keeping” See Amendment to the Regulations Concerning the Handling of Individual Indian Money, ¶ 11(A) (Jan. 5, 1914) (Exhibit 6, Tab 5).

C. In 1894 and 1898, Congress Revised the Accounting Obligations of the United States

As noted above, when it created Interior, Congress provided that funds relating to Indian affairs would be accounted for in accordance with the settlement procedures established for all government accounts. See supra at 5-6. After the creation of Interior, Congress continued to provide specific guidance on how books relating to Indian trust funds were to be kept. For instance, in 1875, Congress provided that:

Each Indian agent shall keep a book of itemized expenditures of every kind, with a record of all contracts, together with the receipts of money from all sources; and the books thus kept shall always be open to inspection; and the said books shall remain in the office at the respective reservations, not to be removed from said reservation by said agent, but shall be safely kept and handed over to his successor; and true transcripts of all entries of every character in said books shall be forwarded quarterly by each agent to the Commissioner of Indian Affairs.

Chap. 132, Sec. 10, 18 Stat. 420, 450-51 (Mar. 3, 1875) (Statutory Compilation, Tab 9).⁵

⁵In 1909, Congress amended this requirement to “relieve disbursing officers from the duty of furnishing transcripts of the cash book to the Indian Office” See Amendment No. 28 to the Regulations of 1904 (Mar. 23, 1909) (Exhibit 6, Tab 3) (discussing Chap. 263, 35 Stat. 781, 784

This requirement was supplemented in 1894, when Congress revised the procedures established in 1817 for keeping and auditing accounts held by government officials. Pursuant to the 1894 Act, the Comptroller of the Treasury “prescribe[d] the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.” Chap. 174, Sec. 5, 28 Stat. 162, 206 (July 31, 1894) (Statutory Compilation, Tab 24). Treasury’s Auditor for the Interior Department was directed to “receive and examine . . . all accounts relating to . . . Indians . . . and to all other businesses within the jurisdiction of the department of the Interior, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Interior.” *Id.* Sec. 7(3), 28 Stat. at 206. Once certified by the Auditors, the settlements of the accounts were “final and conclusive upon the Executive Branch,” although they could be appealed to the Secretary of the Interior or the Comptroller of the Treasury for up to one year. *Id.* Sec. 8, 28 Stat. at 207.

Interior consistently construed the Act of July 31, 1894 as governing the manner of accounting for Indian trust funds. As Interior’s Chief Disbursing Clerk reported in 1911:

Immediately after the passage of the Act [of July 31, 1894], the Secretary of the Interior delegated to the several Bureau Officers of the Department, authority to make rules and regulations for the proper administrative examination, in their respective offices of accounts sent to them; and, from that time to the present, all accounts originating in, or sent to the Indian . . . Bureau[] have received the required administrative examination, and been sent direct therefrom, to the Auditor for the Interior Department [at the Treasury], for final settlement, without approval, or further supervisory action of the Department.

Letter from Geo. W. Evans, Chief Disbursing Clerk, Interior, to Clement S. Ucker, Chief Clerk,

(Mar. 3, 1909) (Statutory Compilation, Tab 38A)).

Interior (Apr. 29, 1911) (Exhibit 5, Tab 5). The regulations promulgated by Interior provided that “miscellaneous funds” – defined to include individual Indian money – were to be reported on the “account current” and “every expenditure therefrom must be properly authorized and vouched for.” Regulations of the Indian Office (1894) (Exhibit 6, Tab 1).⁶

The accounting requirements were supplemented again in 1898, when Congress passed a statute providing that “hereafter Indian agents shall account for all funds coming into their hands as custodians from any source whatever, and be responsible therefor under their official bonds.” Chap. 545, 30 Stat. 571, 595 (Jul. 1, 1898) (Statutory Compilation, Tab 30). This requirement meant in part that any disbursements of funds held by the agent, if not substantiated and approved by Treasury, had to be paid by the disbursing agent unless he obtained relief in the form of a private bill from Congress. Decl. of Frank Sapienza, ¶¶ 8, 19, 56 (Sept. 18, 2000) (Exhibit 7); Chap. 180, Sec. 8, 23 Stat. 76, 97-98 (July 4, 1884) (Exhibit 4, Tab 14); see also, e.g., Chap. 427, 44 Stat. 1483 (May 28, 1926) (Exhibit 20) (private bill appropriating funds for the relief of an Indian agent to reimburse individual Indian funds stolen during a burglary at the Nez Perce Indian Agency).

The Comptroller of the Treasury confirmed his understanding that these settlement and bonding procedures applied to individual Indian monies in 1899, stating:

Our scheme of government includes an accounting system, with proper officers thereof, and it seems reasonable to conclude that when the law provides for an accounting, and makes no special provision therefor, it was the legislative intent that the accounting should be done in the usual manner – that is by the accounting officers of the Treasury Department.

⁶The account current was a document prepared by each disbursing officer that summarized all credits and disbursements for the relevant period. *Id.* ¶¶ 261-265.

Accounts of Indian Agents for the Proceeds of Sales of Property Belonging to Indians, 6 Comptroller of the Treasury 281, 283-284 (Sept. 25, 1889) (Exhibit 8, Tab 1).

In 1904, Interior reaffirmed that individual Indian monies were subject to the settlement procedures established by the Act of July 31, 1894:

When individual Indian moneys . . . are received during the period for which an account is rendered, a schedule thereof must be attached to the account current showing as to each item the source from which received, the date and amount of receipt, and the object for which the money was paid in. Such schedule must be supported by a certificate of the agent as to correctness.

Regulations of the Indian Office Effective April 1, 1904, 52 (1904) (Exhibit 6, Tab 2). Agents were obligated to render their accounts current on a quarterly basis. *Id.*

Interior and Treasury reported regular compliance with these requirements. For instance, in 1909, Interior reported:

Section 12 of the act of July 31, 1894 (28 Stat. L., 209), commonly known as the “Dockery law” requires that quarterly cash accounts of disbursing officers shall be rendered within twenty days after the periods to which they relate; also that they shall be forwarded to and received by the Treasury Department within sixty days of their receipt in the administrative office. It also provides for the waiving of delinquencies in cases of justifiable delay. There were 63 delinquencies on the part of disbursing officers during the year, which, however, were found on investigation to be excusable.

Report of the Commissioner of Indian Affairs, 71 (1909) (Exhibit 5, Tab 4).⁷

D. Beginning in 1904, Interior Promulgated a Series of Regulations Governing Handling and Accounting for Individual Indian Monies

⁷For additional citations to reports by Interior, Treasury, and GAO regarding compliance with the settlement procedures of the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920, please see *infra* 27-29.

Initially, individual Indian monies were not paid into the Treasury. Rather, they were “accounted for as other funds, and paid, upon proper vouchers, directly to the Indians to whom they belong.” Regulations of the Indian Office Effective April 1, 1904, 52 (1904) (Exhibit 6, Tab 2). Gradually, as the amount of income grew and policies changed, Interior began to hold more and more money in trust. Accordingly, by 1906, Interior had begun depositing individual Indian monies into private banks. Interior’s practice of opening individual bank accounts for Indians was confirmed in 1908, when Congress authorized the Secretary of the Interior to deposit Indian moneys, “individual or tribal, coming into his hands as custodian in such national bank or banks as he may select.” Chap. 153, 35 Stat. 70, 73 (Apr. 30, 1908) (Statutory Compilation, Tab 38); see also Chap. 431, Sec. 1, 36 Stat. 855 (June 25, 1910) (Statutory Compilation, Tab 39). In this regard, BIA maintained a close watch over the collection and disbursement of individual Indian monies. In his annual report for 1909, for instance, the Commissioner of Indian Affairs reported the amount of individual Indian Monies on hand at the beginning of the fiscal year (\$3,992,379.78); the amount received during the year (\$8,991,326.19); the amount disbursed during the fiscal year (\$6,468,992.68), and the amount on hand as of June 30, 1909 (\$6,514,713.29). In addition, the Commissioner listed each bank holding individual Indian monies, the amount deposited in that bank as of June 30, 1909, and the amount of bond held by each bank to secure the IIM accounts. See Annual Report of the Commissioner of Indian Affairs for 1909, at 106-09 (Exhibit 5, Tab 4).

In 1913, Interior promulgated what appears to be the first comprehensive set of regulations governing IIM accounts. See Regulations Concerning the Handling of Individual Indian Money (1913) (Exhibit 6, Tab 4). The Regulations confirmed that the IIM accounts were to be accounted for under

the Act of July 31, 1894. Id. ¶¶ 45-51, 103. Banks that served as depositories for these accounts were required to render a quarterly statement of each Indian's account.⁸ The disbursing officer was required to check and correct the bank's quarterly statement and then forward that statement, along with the paid checks, to the Auditor for the Interior Department, Treasury Department, Washington, D.C. Id. ¶¶ 154-158.

In 1917, BIA developed a new accounting system. See U.S. Department of the Interior, Office of Indian Affairs, Accounting System for the United States Indian Service, 5, 13 (1917) (Exhibit 6, Tab 6). The regulations not only established a double-entry bookkeeping system to ensure greater accuracy in the accounting by BIA, but they also confirmed Interior's practice of submitting the IIM accounts as part of the regular settlement procedure established by the Act of July 31, 1894. The regulations specified that the settlement procedure would encompass all funds held by the disbursing officer, funds at the local banks to his official credit, and all funds on deposit with the Treasury, as well as interest postings by the local banks. See id. ¶¶ 156, 169, 205-206. The regulations also established the new "individual account ledgers," which, in combination with the check register and journal vouchers, would comprise the official records of activities in IIM accounts. Id. ¶ 190.

In sum, between 1898 and 1920, accounting for individual Indian monies was governed by the Acts of March 3, 1817 and July 31, 1894. Under these acts, disbursing agents handling individual Indian monies would first account for these funds in accordance with regulations promulgated by Interior. Those accounts would then be submitted to Treasury, which would review and settle the

⁸Attached as Exhibits 10 and 11 are two examples of records showing that Interior received and reviewed quarterly bank statements.

accounts. Those settlements were “final and conclusive” as to the Executive branch, unless challenged within a year of settlement.

While these procedures were followed eighty to one hundred years ago, substantial records documenting both how the system operated and that it operated effectively are located in the National Archives, Records Group 217. See Guide to Federal Records in the National Archives of the United States (Exhibit 9); Decl. of Frank Sapienza ¶ 56 (Sept. 18, 2000) (Exhibit 7). It is impractical to submit each of the settled accounts to this Court for review, given their substantial volume. To understand the significance of these accounts, however, the Defendants have attached excerpts from a settled account. The excerpts attached to this Motion demonstrate that the Treasury auditors examined each transaction and confirmed that it was supported by the appropriate documentation and properly reflected on the books of the agent. When discrepancies or errors were discovered, they were identified to the agent, who had to correct the discrepancies or errors before the accounts could be settled. See id. ¶¶ 9-25, 57, Attachment A.

There is also evidence that the settlement of accounts by Treasury resulted in the review and adjustment of accounts held at private banks for individual Indians. For instance, correspondence between Interior and private banks reveals the statements of the banks were compared with the records maintained by Interior and corrections noted. See, e.g., Letter from Special Disbursing Agent to First National Bank (Feb. 12, 1918) (Exhibit 10) (SEALED EXHIBIT); Letter from Special Disbursing Agent to Citiz. St. Lawton Oklahoma (Exhibit 11) (SEALED EXHIBIT).

E. In 1921, Congress Created GAO and Assigned to GAO the Accounting Duties for, *inter alia*, Individual Indian Monies

Accounting for individual Indian monies changed in 1921, when the Budget and Accounting Act established GAO. Chap. 18, 42 Stat. 20, 23-24 (June 10, 1921) (Statutory Compilation, Tab 49). Under this Act, the Comptroller General immediately assumed the duties of Treasury “relating to keeping the personal ledger accounts of disbursing and collecting officers.” *Id.* Sec. 304, 42 Stat. at 24. Thus, GAO began receiving and settling the accounts of disbursing officers, including Indian agents. Decl. of Frank Sapienza ¶ 26 (Sept. 18, 2000) (Exhibit 7). Just like Treasury’s prior settlements, the “balances certified by the Comptroller General [were] final and conclusive upon the executive branch of the Government.” Chap. 18, 42 Stat. at 24.

Interior and the Comptroller General both interpreted the Budget and Accounting Act of 1921 as the law governing accounting for individual Indian monies. For instance, in its 1935 bookkeeping regulations, Interior stated:

127. . . . The act of July 1, 1898 (30 Stat., 595), requires that Indian agents shall account for all funds coming into their hands as custodians from any source whatever, and be responsible therefor under their official bonds; and Section 5491 of Revised Statutes prescribes a penalty for failure to render accounts as provided by law. These statutes are construed to embrace funds of every nature which are received in their official capacities by superintendents, disbursing agents, and other employees under their supervision. This includes . . . trust funds . . . in which the Government is financially concerned, which are received by officers or employees in their official capacities. . . .

* * *

128. Accounts will be rendered monthly and must be mailed or otherwise transmitted to the Indian Office within 10 days after the periods to which they relate . . .

Department of the Interior, U.S. Indian Field Service Regulations, Section B - Bookkeeping and Accounting ¶¶ 127-128 (1935) (Exhibit 6, Tab 9).

Pursuant to the Budget and Accounting Act of 1921, disbursing agents would prepare their

accounts in accordance with the regulations of Interior and submit those accounts to GAO. The accounts were audited for “compliance with the laws, regulations and decisions governing the expenditure of Indian moneys.” Annual Report of the Acting Comptroller General at 21 (1938) (Exhibit 8, Tab 11). The accountings embraced “both collections and disbursements for the account of the individual Indian.” Id.; see also Indian Funds, Letter from the Comptroller General of the United States, 70th Cong., 2d Sess., Senate Document No. 268, at 3 (1929) (Exhibit 8, Tab 8) (“The Indian fiscal agents render to the General Accounting Office a monthly accounting for all funds except as hereinafter set forth coming into their possession on account of the Indians. Schedules of collection are supported with copies of official receipts issued for the moneys collected, and all disbursements are supported by vouchers or other documents showing the expenditures to have been properly authorized. These accounts are audited by the General Accounting Office and the balances reported verified.”).⁹

Indian agents’ accounts were settled in this manner on a routine basis through 1950. Decl. of Frank Sapienza, ¶¶ 45, 52 (Sept. 18, 2000) (Exhibit 7); see also, e.g., Letter from Comptroller General Opinion B-22895, at 7 (June 13, 1942) (Exhibit 8, Tab 17); Letter from Comptroller General to Secretary of the Interior (June 20, 1927) (Exhibit 8, Tab 5); Letter from Assistant Secretary of the Interior to Comptroller General (Sept. 13, 1927) (Exhibit 8, Tab 6); Letter from Comptroller General to Secretary of the Interior (Oct. 6, 1927) (Exhibit 8, Tab 7). Interior’s regulations specifically addressed the settlement of accounts and required that receipts and disbursements of individual Indian

⁹GAO did note that “[n]o accounts are required to be kept at the agencies for securities purchased by a superintendent, registered in the name of the individual whose specific funds have been applied to the purchase, even though the securities may be subsequently delivered over to the custody of a superintendent.” Id. at 77; see also id. at 79.

monies be subject to the settlement procedure. See U.S. Department of the Interior, Regulations of the Indian Office, Bookkeeping and Accounting (1927) (Exhibit 6, Tab 7); see also Decl. of Frank Sapienza ¶¶ 27-52 (Sept. 18, 2000) (Exhibit 7).

There is no question that the accounts of individual Indians were routinely reviewed and corrected by both Interior and GAO between 1921 and 1951. For instance, the account of one of the named plaintiffs was adjusted in 1940 as a result of the settlement of the disbursing agent's account. Specifically, the 1940 Individual Indian Money Statement reveals two credits, one for \$2.18 and one for \$8.00. The notation next to these two credits indicates they were made to correct for "Gen Acctg Office Excepn." See Individual Indian Money Statement (Exhibit 12) (SEALED EXHIBIT). Consultation with a Journal Voucher makes it clear that these adjustments were the result of the settlement procedure, as the Journal Voucher reflects a credit to that individual "of \$10.18 which was in answer to GAO Exception of Voucher 48-3655-10-134603." Journal Voucher (Miscellaneous) (June 19, 1940) (Exhibit 12) (SEALED EXHIBIT); see also Decedents, Estates of -- Moneys Due Deceased Indians from the United States, A-95510, 18 Comp. Gen. 412, 413 (Nov. 3, 1938) (Exhibit 8, Tab 15) (reviewing the settlement of a disbursing agent's account and "sustaining" the disallowance of certain payments to the superintendent as not in compliance with the regulations and law).

The settled accounts for this period that still exist today are located in the National Archives, Record Group 411. See Guide to Federal Records in the National Archives of the United States (Exhibit 9).¹⁰ While it is impractical to submit each of the settled accounts to this Court for review, the

¹⁰As set forth in the Declaration of Frank Sapienza at paragraph 56-57 (Exhibit 7), not all the settled accounts have survived to date. Although the Defendants can not state with certainty the fate of

Defendants have attached to this Motion excerpts from one of the settled accounts. See Decl. of Frank Sapienza ¶ 57, Attachment B (Sept. 18, 2000) (Exhibit 7). These excerpts demonstrate that the settlement of accounts by GAO involved a detailed procedure for verifying reported transactions by comparison to supporting documentation and correction of errors where necessary. Id.¹¹

In addition to the regular settlement of accounts, during the period between 1920 and 1951, GAO performed at least one audit of the accounts of the Indian Service, including individual Indian monies. Specifically, between July and December 1928, GAO undertook a study that entailed the inspection of 111 of the 116 agencies, schools, hospitals, irrigation districts, and warehouses of the Indian field service. Indian Funds, Letter from the Comptroller General of the United States, 70th Cong., 2d Sess., Senate Document No. 268, at 2 (1929) (Exhibit 8, Tab 10). As part of this study, “[t]he accounts of the individual Indians were ‘test checked’” Id. GAO certainly criticized the Indian Service for certain practices, including loose accounting for certain pupils’ monies, id. at 83, and failure to keep adequate records of investments, id. at 116. In addition, GAO identified certain accounting errors that needed to be addressed, see id. at 94.

GAO, however, did perform a careful examination of the check registers and disbursements from IIM accounts. Based on that examination, GAO found “[t]he impression prevailed that with few

each missing account, it is not surprising that some records would have been lost through the passage of almost a century. Moreover, there are strong indications that the missing accounts were actually settled in accordance with the requirements of law, as set forth more fully in the Declaration of Frank Sapienza.

¹¹The Defendants have notified Plaintiffs of their intention of filing summary judgment based upon the settled accounts and have offered to assist Plaintiffs in accessing and reviewing the accounts. Letter from P. Brooks to D. Gingold (May 26, 2000) (Exhibit 23). As demonstrated in the bi-weekly reports Defendants submit to the Special Master, to date Defendants have produced significant numbers of documents to Plaintiffs from Records Groups 217 and 411.

exceptions the disbursements were on the whole reasonable and as a rule made for purposes beneficial to the Indian concerned.” Id. at 104.

Meanwhile, as concerns regarding BIA’s ability to account appropriately for individual Indian monies increased, the Senate Committee on Indian Affairs considered a proposal that would have required the Commissioner to prepare and submit to the tribes annual statements of activity in the IIM accounts. S. 4187, 72d Cong., 1st Sess. (Mar. 23, 1932) (Exhibit 14). The Commissioner of Indian Affairs objected to the measure for a number of reasons, including insufficient staffing to address an estimated 20,000 individual accounts, stating that for the BIA “to furnish each individual Indian with an annual statement of his personal account would appear to be physically impracticable without an increase in the clerical force.” Moreover, he said, in his opinion, an individual Indian’s account was “a matter between him and the superintendent, who is required by existing instructions to furnish a statement of account to any Indian at any time upon request of the party in interest.” Commissioner of Indian Affairs, Memorandum for the Secretary (May 19, 1932) (Exhibit 5, Tab 6). Congress did not enact the proposed accounting requirement.¹²

F. In 1951, Congress Abolished the Settlement of Accounts Procedure

The 1950s brought the final change in the manner of accounting for IIM funds relevant to this

¹²By 1937, however, superintendents and disbursing agents were also instructed to furnish semiannual statements of receipts and disbursements to each person who had an IIM account. Department of the Interior, U.S. Indian Field Service Regulations, Section B - Bookkeeping and Accounting at B-137 (1935) (Exhibit 6, Tab 9). Defendants have not been able to determine with certainty whether semiannual account statements were provided to each individual account holder between 1937 and 1951, given the significant passage of time between those dates and the filing of this lawsuit. Nonetheless, the evidence is clear that Defendants complied with the statutory accounting procedures for the period 1817-1951.

Motion. In 1950, Congress consolidated and standardized the accounting performed by the various executive agencies by passing the Accounting and Auditing Act of 1950. Under this statute, the Comptroller General of the United States was directed to “prescribe the principles, standards, and related requirements for accounting to be observed by each executive agency” Pub. L. No. 81-784, Chap. 946, Sec. 112(a), 64 Stat. 832, 835 (Sept. 12, 1950) (Statutory Compilation, Tab 75). Once established, these standards governed each executive agency’s accounting systems. *Id.* Sec. 112(b), 64 Stat. at 836. Further, the act authorized the Comptroller General to discontinue GAO’s settlement of accounts. *Id.*, Sec. 117(a), 64 Stat. at 837.

Under this revised accounting procedure, in May 1951, the regular settlement of individual Indian disbursing agents’ accounts by GAO was discontinued. Letter from the Administrative Assistant Secretary of the Interior to Comptroller General (May 14, 1951) (Exhibit 8, Tab 20); Letter from the Acting Director, Division of Budget and Finance to Commissioner of Indian Affairs (June 4, 1951) (Exhibit 8, Tab 21). After this time, individual BIA agencies were required to maintain and settle their own accounts according to the regulations. *Id.*

III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, show that there are no genuine issues of material fact and that the movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Palestine Information Office v. Shultz, 853 F.2d 932, 944 (D.C. Cir. 1988). Once the moving party demonstrates that there are no issues of material fact, the nonmoving party must "make a showing sufficient to establish the existence of an element essential

to that party's case, and on which that party will bear the burden of proof at trial" in order to avoid summary judgment. Celotex Corp., 477 U.S. at 322. To do so, the nonmoving party cannot rely on "general allegations." Fed. R. Civ. P. 56(e); Palestine Information Office, 853 F.2d at 944 (quoting 10A Wright & Miller, Federal Practice and Procedure § 2727 (2d ed. 1983)). He must provide "significant probative" evidence for a reasonable jury to return a verdict in his favor. Id.; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Laningham v. United States Navy, 813 F.2d 1236, 1242 (D.C. Cir. 1987). "If the evidence [of the non-moving party] is merely colorable, . . . or is not sufficiently probative . . . , summary judgment may be granted." Liberty Lobby, 477 U.S. at 249-50 (internal citations omitted).

Importantly, disagreement regarding the legal effect of facts is not a "genuine issue of material fact" but is rather an issue of law properly determined by the court. In other words, if the parties do not differ over the material facts, but only dispute the conclusions to be drawn from them, a trial does not serve a useful purpose, particularly in a case which is to be tried to the court. Klausner v. Ferro, 604 F. Supp. 1188, 1192-93 (E.D. N.Y. 1985), aff'd, 788 F.2d 3 (2d Cir. 1986).

Moreover, "[d]espite the presumption in favor of the non-moving party, the Court must bear in mind that the purpose of Rule 56 is to eliminate the needless delay and expense of unnecessary trial." Miccosukee Tribe of Indians of Florida v. United States, 980 F. Supp. 448, 459 (S.D. Fla. 1997) (citing Celotex Corp., 477 U.S. at 322-23), aff'd, 163 F.3d 1359 (11th Cir. 1998). Thus, summary judgment is proper "if the movant can demonstrate that trial would be useless in that more evidence than is already available in connection with its motion could not reasonably be expected to change the result." Uintah Ute Indians of Utah v. United States, 28 Fed. Cl. 768, 783 (1993) (citing Pure Gold,

Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 626 (Fed. Cir. 1984)). This motion is particularly appropriate as it raises only issues of law. Granting it will serve to narrow and define the issues remaining for trial.

IV. ARGUMENT

Plaintiffs contend that Defendants must perform a reconciliation or accounting for every transaction in every IIM account back to 1887. In this Motion, Defendants demonstrate that any such reconciliation or accounting may not include the period between 1887 and 1950 because, during that time, governing law required each Indian Disbursing Agent to submit his accounts, including those relating to IIM accounts, for settlement. Settlement consisted of a double audit – one by the Indian Office in Washington, D.C. and then one by a second agency (either Treasury or GAO). This system provided a regular and specific procedure for checking the accuracy of accounts maintained on behalf of individual Indians and was the only accounting or reconciliation required by law at the time. Because Defendants complied with these requirements, they are entitled to summary judgment that they are not required to account for transactions that occurred in IIM accounts before 1951.

A. Defendants’ Obligation to Provide an Accounting is Defined by Statute

As this Court has held, the Plaintiffs’ “actionable rights in this case . . . are created by -- and therefore governed by -- statute.” Cobell v. Babbitt, 91 F. Supp. 2d 1, 29 (D.D.C. 1999). This principle is grounded in Article I, Section 8 of the U.S. Constitution, which grants Congress the power “to regulate Commerce . . . with the Indian tribes.” This provision has been construed to give Congress plenary power in Indian Affairs, including the power to define the terms of the United States’ trust obligations to Indian tribes and individuals. Cherokee Nation v. Hitchcock, 187 U.S. 294, 306 (1902);

accord South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) (holding that “Congress possesses plenary power over Indian affairs”); see also Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 83-84 (1977) (affirming that Congress has plenary power over Indian affairs, subject to constitutional limits).

In other words, Congress defines the trust obligations Defendants owe to Plaintiffs through the enactment of statutes or the authorization of regulations. This principle was made explicit when the Supreme Court held that the “statutes and regulations” before it “define[d] the contours of the United States’ fiduciary responsibilities.” United States v. Mitchell (Mitchell II), 463 U.S. 206, 224 (1983). Because the statutes and regulations “define the contours” of the fiduciary obligation, compliance with statutes and regulations is, necessarily, compliance with the fiduciary obligation. In other words, if Defendants complied with the statutory and regulatory requirements governing the accounting for IIM accounts, no matter how much those requirements differed from common law, Defendants complied with their fiduciary obligation to account holders. See Brown v. United States, 42 Fed. Cl. 538, 551 (1998) (“If no regulation places a duty squarely on the Secretary to perform an act, the government cannot be liable for breach of trust in its performance or nonperformance of that act.” (citing Brown v. United States, 86 F.3d 1554, 1563 (Fed. Cir. 1996)), aff’d, 195 F.3d 1334 (Fed. Cir. 1999)); accord Shoshone-Bannock Tribes v. Reno, 56 F.3d 1476, 1482 (D.C. Cir. 1995) (“We agree with the district court that an Indian tribe cannot force the government to take a specific action unless a treaty, statute or agreement imposes, expressly or by implication, that duty.”).

This point is amply demonstrated by the Federal Circuit decision in Pawnee v. United States, 830 F.2d 187 (Fed. Cir. 1987). In that case, the plaintiffs were individual Indians who owned

allotments that had been leased for oil production. The plaintiffs claimed that the United States had breached its trust obligations by failing to obtain royalties on the basis of the highest market value for the particular type of gas produced by the lessees. The Federal Circuit dismissed the plaintiffs' claims, stating:

There is no allegation that Interior failed to comply with the regulations or the leases in valuing the oil for royalty purposes. There is no statutory provision on that subject and no assertion that any statute has been violated . . . Thus, the claim is simply that the Interior Department is compelled to go contrary to and beyond the regulations and the leases in order to fulfill its alleged fiduciary obligation to appellants.

That is a proposition we cannot accept. . . . The scope and extent of the fiduciary relationship, with respect to this particular matter, is established by the regulation and leases. Appellants cannot create a viable fiduciary claim purely by insisting that this court (or the Claims Court) establish different or higher standards. That is a function solely of Congress or its delegates, not of the courts acting on their own. Interior is not required to go beyond directives and leases which are consistent with the statutes and regulations.

Id. at 191-92. Accord Coosewoon v. Meridian Oil Co., 25 F.3d 920, 930 (10th Cir. 1994) (“Thus, the United States has complied with applicable statutes and regulations concerning the assessment of penalties and therefore did not breach its fiduciary duty.”).

Here, Congress defined the obligation to account for individual Indian monies for the relevant time periods in the Act of March 3, 1817, Act of July 31, 1894, and the Budget and Accounting Act of 1920. Congress established and the regulations supplemented specific procedures for final settlement of the accounts. The statutes provided a strict time period for the executive agencies to challenge the auditor's exceptions.¹³

¹³As noted above, between 1868 and 1951, the law provided that the settlements achieved through the settlement procedures were “final and conclusive as to the Executive Branch.” Under both the Act of July 31, 1894 and the Budget and Accounting Act of 1920, however, individuals who had a

Accordingly, resort to common-law definitions of an accounting for a private trust to augment or modify Congress's definition is inappropriate.¹⁴ As set forth below, all available records indicate that up until at least 1951 the federal government acted in accordance with the accounting requirements established by Congress. Compliance with statute and regulation existing at the time is the standard by which the Defendants' behavior must be judged, not the common-law or subsequent statutes addressing similar issues. Cf. Navajo Tribe of Indians v. United States, 9 Cl. Ct. 336, 408 n. 66 (1986) ("It is the state of the knowledge during the time at issue, not that subsequently developed,

claim affected by a settled account had a right to challenge the decisions of the auditors in court. See United States v. Gillmore, 189 F. 761, 762 (S.D. N.Y. 1911) (Hand) ("The statute (Act July 31, 1894, c. 174, Sec. 8, 28 Stat. 207 . . . which makes the finding of the Comptroller 'final and conclusive,' limits its own effect to the 'executive branch of the government.' I do not know what that means, unless it be to leave it open to the courts to re-examine the merits and decide, regardless of the finding of the Comptroller. It was no doubt to give to the treasury department an authoritative word when it chanced to differ with the other departments." (footnote omitted)); Letter from Comptroller General to Mr. Vincent S. Lukas, U.S.C.G., Retired, Unpublished B-152388 (Mar. 4, 1964) (Exhibit 8, Tab 23) (a claimant to funds subject to the settlement could "request a review or reconsideration of an adverse settlement and [had] further recourse to the Congress or to the Courts (Section 3040, Title 1, General Accounting Office Policy and Procedures Manual.)"). The judicial challenge, however, was comprised of a request to review the audit performed by Treasury or GAO, not a right to a new or different style of accounting. Gillmore, 189 F. at 762. Moreover, such claims would be subject to the statute of limitations.

¹⁴Interestingly, the common-law provides that the trust instrument defines the obligations of the trustee, including the scope of the accounting, the persons to whom, and frequency with which such an accounting must be provided. See, e.g., Restatement (Second) of Trusts, § 172, Comment d. For purposes of a trust analysis, the statutes (i.e. the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920) comprise the trust instrument. In that trust instrument, Congress specifically established a procedure for accounting for all funds arising in the context of Indian Affairs. While, as Defendants have established, the common-law does not govern, even under the common-law the procedure established in the statutes that governed Defendants' accounting obligation for the relevant time period.

which is relevant in determining whether a trustee failed to meet its duty.”).¹⁵ Thus, the Defendants’ motion does not deprive Plaintiffs of an accounting, it affirms that the actions taken up to 1951 were the accounting due to the Plaintiffs.

Any question as to whether the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1921 governed accounting for individual Indian monies must be resolved in favor of the agency’s interpretation of the statutes as implemented through regulations and nearly thirty years of administrative practice. The “Supreme Court caselaw teaches that [a court] must defer to agency interpretations that are supported by ‘regulations, rulings, or administrative practice.’” United States v. Occidental Chem. Co., 200 F.3d 143, 151 (3d Cir. 1999) (quoting and citing Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 212 (1988); Bragdan v. Abbott, 524 U.S. 624, 642 (1998) (“the well-reasoned views of the agencies implementing a statute ‘constitute a body of expertise and informed judgment to which courts . . . may properly resort for guidance.” (quoting Skidmore v. Swift & Co., 323 U.S. 134, 139-40 (1944)); Auer v. Robbins, 519 U.S. 452, 462 (1997) (deferring to agency interpretation where there was “no reason to suspect that the interpretation does not reflect the agency’s fair and considered judgment on the matter in question.”)). Pursuant to the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920, Interior, Treasury, and GAO promulgated numerous regulations and issued many formal opinions setting forth their position that IIM accounts were subject to the settlement procedures established under those statutes. See

¹⁵As demonstrated in the Defendants’ First Phase II Motion for Summary Judgment at 24-27, the 1994 Reform Act did establish **prospective** standards for regular accountings to the beneficiaries, but did not address the historical accounting obligations with sufficient specificity to indicate an intent to alter the statutory requirements applicable to transactions prior to 1951.

supra 9-13, 15-16. As the Comptroller of the Treasury stated in 1899:

Our scheme of government includes an accounting system, with proper officers thereof, and it seems reasonable to conclude that when the law provides for an accounting, and makes no special provision therefor, it was the legislative intent that the accounting should be done in the usual manner – that is by the accounting officers of the Treasury Department.

Accounts of Indian Agents for the Proceeds of Sales of Property Belonging to Indians, 6 Comptroller of the Treasury 281, 283-284 (Sept. 25, 1889) (Exhibit 8, Tab 1). Thus, Interior, Treasury, and GAO consistently interpreted these three statutes as setting the standard for accounting for individual Indian monies between 1817 and 1951.

Therefore, at a minimum Defendants are entitled to summary judgment that any obligation to account for transactions occurring prior to 1951 can be satisfied by demonstrating compliance with the requirements of the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920.

B. Defendants Complied with the Requirements of the Act of March 3, 1817, Act of July 31, 1894, and the Budget and Accounting Act of 1920

The Defendants indeed complied with the accounting obligations imposed by the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920. The official reports and documents of Interior, Treasury, and GAO reflect that the Departments complied with the settlement procedures as required by law. These reports state how many accounts of Indian disbursing agents were settled each year and indicate whether any accounts are delinquent for the particular year. See, e.g., Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1887, at 545 (Exhibit 15, Tab 1); Annual Report of the Secretary of the Secretary of the

Treasury on the State of Finances for the Year 1888, at 576 (Exhibit 15, Tab 2); Annual Report of the Secretary of the Treasury on the State of Finances for the Year 1889, at 517 (Exhibit 15, Tab 3); Annual Report of the Secretary of the Treasury on the State of Finances for the Year 1891, at 545 (Exhibit 15, Tab 5); Annual Report of the Secretary of the Treasury on the State of Finances for the Year 1892, at 523 (Exhibit 15, Tab 6); Annual Report of the Secretary of the Treasury on the State of Finances for the Year 1893, at 977-78 (Exhibit 15, Tab 7); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1894, at 876-78 (Exhibit 15, Tab 8); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1895, at 633-34 (Exhibit 15, Tab 9); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1896, at 709-11 (Exhibit 15, Tab 10); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1897, at 668-70 (Exhibit 15, Tab 11); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1898, at 761-80 (Exhibit 15, Tab 12); Annual Report of the Auditor for the Department of the Interior at 3-5 (1907) (Exhibit 15, Tab 13); Annual Report of the Auditor for the Department of the Interior at 3-9 (1908) (Exhibit 15, Tab 14); Annual Report of the Auditor for the Department of the Interior at 4-7 (1909) (Exhibit 15, Tab 15); Annual Report of the Auditor for the Department of the Interior at 3-4 (1910) (Exhibit 15, Tab 16); Annual Report of the Auditor for the Department of the Interior at 3-5 (1911) (Exhibit 15, Tab 17); Annual Report of the Auditor for the Department of the Interior at 3-5 (1912) (Exhibit 15, Tab 18); Annual Report of the Auditor for the Department of the Interior at 7-9 (1914) (Exhibit 15, Tab 13); Annual Report of the Auditor for the Department of the Interior at 4-5 (1915) (Exhibit 15, Tab 14); Annual Report of the Auditor for the Department of the

Interior at 4-5 (1916) (Exhibit 15, Tab 15); Annual Report of the Auditor for the Department of the Interior at 3-4 (1919) (Exhibit 15, Tab 17); Annual Report of the Auditor for the Department of the Interior at 3-4 (1920) (Exhibit 15, Tab 18); Accounts of Indian Agents for the Proceeds of Sales of Property Belonging to Indians, 6 Comptroller of the Treasury (Sept. 25, 1889) (Exhibit 8, Tab 1); Annual Reports of the Department of the Interior, at 59-60 (1905) (Exhibit 5, Tab 2); Annual Report of GAO, 17-18 (1924) (Exhibit 8, Tab 1); Annual Report of GAO, 28-30 (1925) (Exhibit 8, Tab 2); Annual Report of the Comptroller General, 36-37 (1926) (Exhibit 8, Tab 3); Excerpt from the Annual Report of the Comptroller General, 81 (1927) (Exhibit 8, Tab 4); Annual Report of the Comptroller General, 46, 107 (1928) (Exhibit 8, Tab 8); Annual Report of the Comptroller General, 119 (1929) (Exhibit 8, Tab 9); Annual Report of the Comptroller General, 22, 117 (1930) (Exhibit 8, Tab 11); Annual Report of the Comptroller General (1931) (Exhibit 8, Tab 12); Annual Report of the Comptroller General (1932) (Exhibit 8, Tab 13); Excerpt from the Annual Report of the Acting Comptroller General (1938) (Exhibit 8, Tab 14); Decedents, Estates of -- Moneys Due Deceased Indians from the United States, A-95510, 18 Comp. Gen. 412 (Nov. 3, 1938) (Exhibit 8, Tab 15); Excerpt from the Annual Report of the Comptroller General, 99 (1942) (Exhibit 8, Tab 17); Annual Report of the Comptroller General, 50-52 (1943) (Exhibit 8, Tab 18); Annual Report of the Comptroller General, 59, 119 (1944) (Exhibit 8, Tab 19). In other words, government reports are evidence that Interior submitted all of the accounts of its disbursing agents to the settlement procedures required by the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920.

These reports are confirmed by other evidence, such as documentation from the named

plaintiffs' own accounts, which demonstrates that the records of the disbursing agents were checked and, where necessary, corrections were made to the accounts in accordance with the statutory procedures. See, e.g., Individual Indian Money Statement (Exhibit 13) (SEALED EXHIBIT). Further, there is correspondence indicating that the records of banks were also checked and audited as part of this procedure. See, e.g., Letter from Special Disbursing Agent to First National Bank (Feb. 12, 1918) (Exhibit 10) (SEALED EXHIBIT); Letter from Special Disbursing Agent to Citiz. St. Lawton, Oklahoma (Exhibit 11) (SEALED EXHIBIT).

Moreover, experts familiar with the records of actual settled accounts confirm that these procedures were followed for all disbursing agents handling individual Indian monies. Attached to this motion is the declaration of Frank Sapienza, Director of the Indian Trust Accounting Division ("ITAD"). ITAD was established in 1972 as a Division of the General Services Administration and, since its creation, has had responsibility for preparing accounting reports for cases heard by the U.S. Court of Claims and, in earlier years, the Indian Claims Commission. Frank Sapienza has been with ITAD since 1973 and has testified as an expert accountant in over fifty cases involving claims by Indian Tribes filed in the U.S. Court of Claims and the Indian Claims Commission. During his work on those fifty cases, Mr. Sapienza searched for, reviewed, and reported on the settled accounts of numerous Indian disbursing agents. Decl. of Frank Sapienza ¶ 1 (Sept. 18, 2000) (Exhibit 7). In the attached declaration, Mr. Sapienza testifies that the accounts of Indian disbursing agents were settled in accordance with the procedures set forth in the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920. Id. ¶¶ 25, 52. "Because Indian disbursing agents were the officials who received and disbursed both individual Indian monies and tribal monies . . . the settlement

of the Indian disbursing agents' accounts resulted in a double-audit of reported receipts and disbursements of individual Indian and tribal monies during the time period covered by the account current." Id.

Finally, Mr. Sapienza notes that, under applicable law, if a disbursing agent failed to settle his account, within thirty days after the end of each quarter, the agent and/or his bond were subject to legal proceedings. U.S. Department of the Interior, Regulations of the Indian Office. 1884, p. 53 ¶ 268. Despite having spent more than twenty years working with the records of Treasury, GAO, and Interior, relating to accounting for Indian funds, Mr. Sapienza has seen no evidence of such legal proceedings being brought against either the agents or their sureties. Decl. of Frank Sapienza ¶ 56 (Sept. 18, 2000) (Exhibit 7); see also Business and Accounting Methods, Indian Bureau, Report to the Joint Commission of the Congress of the United States, 63d Cong. 3d Sess. (1915) (Exhibit 20).

In short, the undisputed facts demonstrate a pattern and practice of compliance with the settlement procedures set forth in the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920. Further, despite the passage of many years, the vast majority of the settled accounts exist today as specific proof of compliance with the settlement procedures set forth in the Act of March 3, 1817, the Act of July 31, 1894, and the Budget and Accounting Act of 1920. See Decl. of Frank Sapienza ¶ 56 (Sept. 18, 2000) (Exhibit 7).

Moreover, the Defendants are entitled to a presumption that they did, in fact, comply with law during the relevant time period. See, e.g., United States v. Chemical Foundation, Inc., 272 U.S. 1, 14-15 (1926) ("The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their

official duties.”) (citing Confiscation Cases, 87 U.S. 92 (1873); United States v. Page, 137 U.S. 673, 679-80 (1891); United States v. Nix, 189 U. S. 199, 205 (1903)); see also Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971), overruled on unrelated grounds by Califano v. Sanders, 430 U.S. 99, 105 (1977).

This point is well-established in Red Lake Band v. United States, 17 Cl. Ct. 362 (1989), in which the tribes contended that two historical reports criticizing the BIA’s handling of financial affairs required the court to reject a presumption that the Defendants had complied with law. The court rejected the tribes’ argument, stating:

... Based on the testimony, the exhibits, and the presumption of regularity which attaches to the conduct of government employees, the court will presume that if an expenditure went through the claims settlement process, the supporting documentation was present and properly executed.

In sum, the type of evidence presented by plaintiff does not rebut the presumption that the process went according to regulation and that reviewers and auditors were doing their job to require documentation of disbursements.

Id. at 408 (citations omitted). Similarly, given the substantial evidence of compliance with the settlement procedures set forth in the Act of March 3, 1817, the Act of July 31, 1894 and the Budget and Accounting Act of 1920, there is no evidence to rebut the presumption that the government employees of Treasury, Interior, and GAO complied with the requirements of these three statutes.

V. CONCLUSION

Defendants were subject to, and complied with, a detailed and specific accounting procedure for IIM transactions through 1951. Plaintiffs are not entitled to a second accounting or reconciliation of the transactions subject to that procedure. For these reasons, Defendants are entitled to summary judgment that they cannot be required in this action to account for or reconcile individual transactions

occurring before 1951.

Dated: November 20, 2000

Respectfully submitted

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INDEX TO EXHIBIT 4 TO
DEFENDANTS' THIRD PHASE II MOTION FOR SUMMARY JUDGMENT
(RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

Tab 3 Chap. 45, 3 Stat. 366 (Mar. 3, 1817)

Tab 6A Chap. 108, 9 Stat. 395 (Mar. 3, 1849)

Tab 8A Chap. 36, 15 Stat. L. 54 (Mar. 30, 1868)

Tab 14 Chap. 180, 23 Stat. 76 (July 4, 1884)

Tab 55A Chap. 576, Sec. 1, 48 Stat. 984 (June 18, 1934)

INDEX TO EXHIBIT 5 TO
DEFENDANTS' THIRD PHASE II MOTION FOR SUMMARY JUDGMENT
(RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

Tab 1	Annual Report of the Commissioner of Indian Affairs (1897)
Tab 2	Annual Reports of the Department of the Interior (1905)
Tab 3	Report of the Commissioner of Indian Affairs (Sept. 30, 1908)
Tab 4	Report of the Commissioner of Indian Affairs (1909)
Tab 5	Letter from Geo. W. Evans, Chief Disbursing Clerk, Interior, to Clement S. Ucker, Chief Clerk, Interior (Apr. 29, 1911)
Tab 6	Commissioner of Indian Affairs, Memorandum for the Secretary (May 19, 1932)

INDEX TO EXHIBIT 7 TO
DEFENDANTS' THIRD PHASE II MOTION FOR SUMMARY JUDGMENT
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Tab 1	Regulations of the Indian Office (1894)
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Tab 5	Amendment to the Regulations Concerning the Handling of Individual Indian Money (Jan. 5, 1914)
Tab 6	U.S. Department of the Interior, Office of Indian Affairs, Accounting System for the United States Indian Service (1917)
Tab 7	U.S. Department of the Interior, Regulations of the Indian Office, Bookkeeping and Accounting (1927)
Tab 8	U.S. Department of the Interior, Revised Regulations of the Indian office, Bookkeeping and Accounting (1930)
Tab 9	U.S. Department of the Interior, U.S. Indian Field Service Regulations, Section B - Bookkeeping and Accounting (1935)

INDEX TO EXHIBIT 15 TO

DEFENDANTS' THIRD PHASE II MOTION FOR SUMMARY JUDGMENT (RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

Tab 1	Excerpt from Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1887
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Tab 9	Excerpt from Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1895
Tab 10	Excerpt from Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1896
Tab 11	Excerpt from Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1897
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Tab 13	Annual Report of the Auditor for the Department of the Interior (1907)
Tab 14	Annual Report of the Auditor for the Department of the Interior (1908)
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Tab 17	Annual Report of the Auditor for the Department of the Interior (1911)
Tab 18	Annual Report of the Auditor for the Department of the Interior (1912)
Tab 19	Annual Report of the Auditor for the Department of the Interior (1914)
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DEFENDANTS' THIRD PHASE II MOTION FOR SUMMARY JUDGMENT
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Tab 5	Letter from Comptroller General to Secretary of the Interior (June 20, 1927)
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Tab 8	Excerpt from the Annual Report of the Comptroller General (1928)
Tab 9	Excerpt from the Annual Report of the Comptroller General (1929)
Tab 10	Indian Funds, Letter from the Comptroller General of the United States, 70th Cong., 2d Sess., Senate Document No. 268 (1929)
Tab 11	Excerpt from the Annual Report of the Comptroller General (1930)
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Tab 16	Excerpt from the Annual Report of the Comptroller General (1942)
Tab 17	Letter from Comptroller General Opinion B-22895 (June 13, 1942)

- Tab 18 Excerpt from the Annual Report of the Comptroller General (1943)
- Tab 19 Excerpt from the Annual Report of the Comptroller General (1944)
- Tab 20 Letter from the Administrative Assistant Secretary of the Interior to Comptroller General (May 14, 1951)
- Tab 21 Letter from the Acting Director, Division of Budget and Finance to Commissioner of Indian Affairs (June 4, 1951)
- Tab 22 Letter from Comptroller General to Mr. Vincent S. Lukas, U.S.C.G., Retired, Unpublished B-152388 (Mar. 4, 1964)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-1285
)	(RCL)
BRUCE BABBITT, Secretary of)	
the Interior, et al.)	
)	
)	
Defendants.)	
_____)	

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
DEFENDANTS' THIRD PHASE II MOTION FOR PARTIAL SUMMARY JUDGMENT
(RE: SETTLEMENT OF ACCOUNTS BY TREASURY AND GAO)

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, the Defendants state the following undisputed facts in support of their Motion for Partial Summary Judgment:

1. From 1789 until 1871, Congress directed and the Executive Branch implemented a policy of negotiating treaties with Indian tribes in order to resolve conflicts with and obtain lands from the tribes. See, e.g., Francis Paul Prucha, Great Father, I, at 168-73 (University of Nebraska Press 1984) (Exhibit 3). As a result of these treaties, over the decades, the United States began to supervise increasing amounts of tribal trust funds.

2. Accounting for these tribal funds was governed by a statute which had been passed in 1817. That statute, entitled "An Act to Provide for the Prompt Settlement of Public Accounts," established a system of accounting in which "all claims and demands whatever by the United States or against them, and all accounts whatever, in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Treasury Department." Chap. 45, Sec. 2, 3 Stat. 366

(Mar. 3, 1817) (Exhibit 4, Tab 3). The act established a number of auditors and comptrollers, each of whom was assigned a specific area of supervision. One auditor was assigned to “receive all accounts . . . arising out of Indian affairs, and examine the same, and thereafter certify the balance, and transmit the accounts, with the vouchers and certificate, to the first comptroller for his decision thereon”

Id. Sec. 4, 3 Stat. at 366. A comptroller had the “duty . . . to examine all accounts settled by the [auditor in charge of accounts arising out of Indian affairs] and certify the balances arising thereon”

Id. Sec. 7, 3 Stat. at 367.

3. Secretary of War Calhoun created the Bureau of Indian Affairs by order of March 11, 1824. See Federal Indian Law at 217 (1958) (Exhibit 21).

4. In 1834, Congress formally organized that office into the “Indian department,” which eventually became the Bureau of Indian Affairs (“BIA”).¹⁶ In the same statute, Congress provided that funds handled by BIA would be accounted for in accordance with the Act of March 3, 1817.

Specifically, the act required officers of the BIA to “settle their accounts, annually, at the War Department, on the first day of October; and copies of the same shall be laid, annually, before Congress at the commencement of the ensuing session, by the proper accounting officers. . . .” Chap. 162, 4 Stat. 737-38 (June 30, 1834) (Statutory Compilation, Tab 4). In addition, Congress provided that “the President of the United States shall be, and is hereby, authorized to prescribe such rules and regulations as he may think fit, . . . for the settlement of the accounts of the [BIA].” Id. Sec. 17, 4 Stat. at 738.

¹⁶The name of the office charged with Indian affairs has evolved. For the sake of simplicity, this brief will use the name BIA to refer to that office in all its incarnations.

4. In March 1849, Congress created the Department of the Interior (“Interior”) and placed both BIA and public land matters under the Secretary of the Interior. Chap. 108, 9 Stat. 395 (Mar. 3, 1849) (Exhibit 4, Tab 6A). The Act gave the Secretary of the Interior supervisory control over Indian affairs, “subject to the same adjustment or control” exercised by the auditors and comptrollers at Treasury pursuant to the Act of March 3, 1817. Id. Sec. 5, 9 Stat. at 395.

5. Before 1868 there had been efforts by various executive agencies to challenge or change the balances certified by the auditors and comptrollers in accordance with the Act of March 3, 1817. In the Matter of Maj. John S. Billings, 23 Ct. Cl. 166, 180 (Ct. Cl. 1888).

6. Congress amended the Act of March 3, 1817 through the Act of March 30, 1868, “apparently to settle conclusively that long standing controversy between executive officers and to prevent the interferences of others in the settlement of accounts by the accounting officers.” Id.

7. In the Act of March 30, 1868, Congress provided that:

The balances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts.

Chap. 36, 15 Stat. L. 54 (Mar. 30, 1868) (Exhibit 4, Tab 8A).

8. Allotment of lands began in the mid-1800s and proceeded after the passage of the General Allotment Act of 1887, ch. 119, 24 Stat. 388 (Feb. 8, 1887) (Statutory Compilation, Tab

18).³ Under this and other similar statutes, tribal reservations were divided into individual allotments, which were granted to individual Indians, and “surplus” lands that were sold. The initial intent was that each individual would live on his or her allotment, and therefore the General Allotment Act prohibited leasing of the allotments. See id. Sec. 5, 24 Stat. at 389.

9. By 1891, however, Congress had recognized that not all allottees would be able to make their own allotments productive. Therefore, Congress authorized Interior to lease to a third party the allotment of any individual who “by reason of age or other disability . . . can not personally and with benefit to himself occupy or improve his allotment or any part thereof . . .” Chap. 383, 26 Stat. 794, 795 (Feb. 28, 1891) (Statutory Compilation, Tab 22). This authority was extended periodically thereafter. See, e.g., Chap. 290, 28 Stat. 286, 305 (Aug. 15, 1894) (Statutory Compilation, Tab 25); Chap. 3, 30 Stat. 62, 85 (June 7, 1897) (Statutory Compilation, Tab 29); Chap. 598, 31 Stat. 221, 229 (May 31, 1900) (Exhibit A, Tab 31A).⁴

10. Beginning in the late 1890s, Congress began to authorize selected groups of allottees to lease their allotments, subject to the regulations of the Indian Department.⁵ By 1910, widespread

³Statutory Compilation refers to Exhibits 20 and 21 to Defendants’ First Phase II Motion for Summary Judgment.

⁴Exhibit A is a compilation of additional statutes not included in the Statutory Compilation previously submitted to this Court. For the Court’s convenience, the tabs in Exhibit A have been numbered so that the statutes can be inserted into the Statutory Compilation so that all the relevant statutes will appear in chronological order.

⁵See, e.g., Chap. 3, 30 Stat. 62, 72 (June 7, 1897) (Statutory Compilation, Tab 29); Chap. 598, 31 Stat. 221, 246 (May 31, 1900) (Statutory Compilation, Tab 31A); Pub. L. 57-200, Chap. 1323, Sec. 17, 32 Stat. 500, 504 (June 30, 1902) (Statutory Compilation, Tab 32A); Pub. L. 57-241, Chap. 1375, Sec. 72, 32 Stat. 716, 726 (July 1, 1902) (Statutory Compilation, Tab 32B); Pub. L. 59-129, Ch. 1876, Sec. 19, 34 Stat. 137, 144 (Apr. 26, 1906) (Statutory Compilation, Tab 33A); Pub.

leasing of allotments was permitted. Pub. L. 61-312, Chap. 431, Sec. 4, 36 Stat. 855, 856-57 (June 25, 1910) (Statutory Compilation, Tab 39).⁶

11. BIA maintained a close watch over the collection and disbursement of IIM. In his annual report for 1909, for instance, the Commissioner of Indian Affairs reported the amount of individual Indian Monies on hand at the beginning of the fiscal year (\$3,992,379.78); the amount received during the year (\$8,991,326.19); the amount disbursed during the fiscal year (\$6,468,992.68), and the amount on hand as of June 30, 1909 (\$6,514,713.29). In addition, the Commissioner listed each bank holding individual Indian monies, the amount deposited in that bank as of June 30, 1909, and the amount of bond held by each bank to secure the IIM accounts. See Annual Report of the Commissioner of Indian Affairs for 1909, at 106-09 (Exhibit 5, Tab 4).

12. By November 1897, Indian agents were handling increasing amounts of money for individual Indians. Annual Report of the Commissioner of Indian Affairs, 44-45 (1897) (Exhibit 5, Tab 1).

13. These funds came from a variety of sources, including the sale and lease of allotments, as well as distributions of tribal trust funds to individual members of the tribes (commonly known as per capita payments). See, e.g., Report of the Commissioner of Indian Affairs, 70-76 (Sept. 30, 1908) (Exhibit 5, Tab 3); Chap. 2523, Sec. 1, 34 Stat. 1221 (Mar. 2, 1907) (Statutory Compilation, Tab

L. 59-154, Chap. 2285, 34 Stat. 1015, 1034 (Mar. 1, 1907) (Statutory Compilation, Tab 36); Chap. 153, 35 Stat. 95, 97 (Apr. 30, 1908) (Statutory Compilation, Tab 38).

⁶See also Pub. L. 60-316, Chap. 263, 35 Stat. 781, 783 (Mar. 3, 1909) (Statutory Compilation, Tab 38A) (providing that “lands allotted in severalty” except those of the Five Civilized Tribes and the Osage, “may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior . . .”).

37).

14. During the early 1900s, agents also began receiving increasing funds from other sources as well. For instance, by at least 1914, Interior employees were receiving funds “voluntarily placed by [individuals] in the hands of the officer for safe-keeping” See Amendment to the Regulations Concerning the Handling of Individual Indian Money, ¶ 11(A) (Jan. 5, 1914) (Exhibit 6, Tab 5).

15. Meanwhile, in 1875, Congress had provided that:

Each Indian agent shall keep a book of itemized expenditures of every kind, with a record of all contracts, together with the receipts of money from all sources; and the books thus kept shall always be open to inspection; and the said books shall remain in the office at the respective reservations, not to be removed from said reservation by said agent, but shall be safely kept and handed over to his successor; and true transcripts of all entries of every character in said books shall be forwarded quarterly by each agent to the Commissioner of Indian Affairs.

Chap. 132, Sec. 10, 18 Stat. 420, 450-51 (Mar. 3, 1875) (Statutory Compilation, Tab 9).⁷

16. This requirement was supplemented in 1894, when Congress revised the procedures established in 1817 for keeping and auditing accounts held by government officials. Pursuant to the 1894 Act, the Comptroller of the Treasury “prescribe[d] the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.” Chap. 174, Sec. 5, 28 Stat. 162, 206 (July 31, 1894) (Statutory Compilation, Tab 24). Treasury’s Auditor for the Interior Department was directed to “receive and examine . . . all accounts relating to . . . Indians . . . and to all other businesses within the jurisdiction of the department of the Interior, and certify the balances arising

⁷In 1909, Congress amended this requirement to “relieve disbursing officers from the duty of furnishing transcripts of the cash book to the Indian Office” See Amendment No. 28 to the Regulations of 1904 (Mar. 23, 1909) (Exhibit 6, Tab 3) (discussing Chap. 263, 35 Stat. 781, 784 (Mar. 3, 1909) (Statutory Compilation, Tab 38A)).

thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Interior.” Id. Sec. 7(3), 28 Stat. at 206. Once certified by the Auditors, the settlements of the accounts were “final and conclusive upon the Executive Branch,” although they could be appealed to the Secretary of the Interior or the Comptroller of the Treasury for up to one year. Id. Sec. 8, 28 Stat. at 207.

17. Interior consistently construed the Act of July 31, 1894 as governing the manner of accounting for Indian trust funds. As Interior’s Chief Disbursing Clerk reported in 1911:

Immediately after the passage of the Act [of July 31, 1894], the Secretary of the Interior delegated to the several Bureau Officers of the Department, authority to make rules and regulations for the proper administrative examination, in their respective offices of accounts sent to them; and, from that time to the present, all accounts originating in, or sent to the Indian . . . Bureau[] have received the required administrative examination, and been sent direct therefrom, to the Auditor for the Interior Department [at the Treasury], for final settlement, without approval, or further supervisory action of the Department.

Letter from Geo. W. Evans, Chief Disbursing Clerk, Interior, to Clement S. Ucker, Chief Clerk, Interior (Apr. 29, 1911) (Exhibit 5, Tab 5).

18. The regulations promulgated by Interior provided that “miscellaneous funds” – defined to include individual Indian money – were to be reported on the “account current” and “every expenditure therefrom must be properly authorized and vouched for.” Regulations of the Indian Office (1894) (Exhibit 6, Tab 1).⁸

19. The accounting requirements were supplemented again in 1898, when Congress passed

⁸The account current was a document prepared by each disbursing officer that summarized all credits and disbursements for the relevant period. Id. ¶¶ 261-265.

a statute providing that “hereafter Indian agents shall account for all funds coming into their hands as custodians from any source whatever, and be responsible therefor under their official bonds.” Chap. 545, 30 Stat. 571, 595 (Jul. 1, 1898) (Statutory Compilation, Tab 30).

20. This bonding requirement meant in part that any disbursements of funds held by the agent, if not substantiated and approved by Treasury, had to be paid by the disbursing agent unless he obtained relief in the form of a private bill from Congress. Decl. of Frank Sapienza, ¶¶ 8, 19, 56 (Sept. 18, 2000) (Exhibit 7); Chap. 180, Sec. 8, 23 Stat. 76, 97-98 (July 4, 1884) (Exhibit 4, Tab 14); see also, e.g., Chap. 427, 44 Stat. 1483 (May 28, 1926) (Exhibit 20) (private bill appropriating funds for the relief of an Indian agent to reimburse individual Indian funds stolen during a burglary at the Nez Perce Indian Agency).

21. The Comptroller of the Treasury confirmed his understanding that these settlement and bonding procedures applied to individual Indian monies in 1899, stating:

Our scheme of government includes an accounting system, with proper officers thereof, and it seems reasonable to conclude that when the law provides for an accounting, and makes no special provision therefor, it was the legislative intent that the accounting should be done in the usual manner – that is by the accounting officers of the Treasury Department.

Accounts of Indian Agents for the Proceeds of Sales of Property Belonging to Indians, 6 Comptroller of the Treasury 281, 283-284 (Sept. 25, 1889) (Exhibit 8, Tab 1).

22. In 1904, Interior reaffirmed that individual Indian monies were subject to the settlement procedures established by the Act of July 31, 1894:

When individual Indian moneys . . . are received during the period for which an account is rendered, a schedule thereof must be attached to the account current showing as to each item the source from which received, the date and amount of receipt, and the

object for which the money was paid in. Such schedule must be supported by a certificate of the agent as to correctness.

Regulations of the Indian Office Effective April 1, 1904, 52 (1904) (Exhibit 6, Tab 2). Agents were obligated to render their accounts current on a quarterly basis. Id.

23. Interior and Treasury reported regular compliance with these requirements. For instance, in 1909, the Secretary reported:

Section 12 of the act of July 31, 1894 (28 Stat. L., 209), commonly known as the “Dockery law” requires that quarterly cash accounts of disbursing officers shall be rendered within twenty days after the periods to which they relate; also that they shall be forwarded to and received by the Treasury Department within sixty days of their receipt in the administrative office. It also provides for the waiving of delinquencies in cases of justifiable delay. There were 63 delinquencies on the part of disbursing officers during the year, which, however, were found on investigation to be excusable.

Report of the Commissioner of Indian Affairs, 71 (1909) (Exhibit 5, Tab 4); see also Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1887, at 545 (Exhibit 15, Tab 1); Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1888, at 576 (Exhibit 15, Tab 2); Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1889, at 517 (Exhibit 15, Tab 3); Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1891, at 545 (Exhibit 15, Tab 5); Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1892, at 523 (Exhibit 15, Tab 6); Annual Report of the Secretary of the Secretary of the Treasury on the State of Finances for the Year 1893, at 977-78 (Exhibit 15, Tab 7); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1894, at 876-78 (Exhibit 15, Tab 8); Annual Report of the Secretary of the Treasury on the State of the

Finances for the Year 1895, at 633-34 (Exhibit 15, Tab 9); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1896, at 709-11 (Exhibit 15, Tab 10); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1897, at 668-70 (Exhibit 15, Tab 11); Annual Report of the Secretary of the Treasury on the State of the Finances for the Year 1898, at 761-80 (Exhibit 15, Tab 12); Annual Report of the Auditor for the Department of the Interior at 3-5 (1907) (Exhibit 15, Tab 13); Annual Report of the Auditor for the Department of the Interior at 3-9 (1908) (Exhibit 15, Tab 14); Annual Report of the Auditor for the Department of the Interior at 4-7 (1909) (Exhibit 15, Tab 15); Annual Report of the Auditor for the Department of the Interior at 3-4 (1910) (Exhibit 15, Tab 16); Annual Report of the Auditor for the Department of the Interior at 3-5 (1911) (Exhibit 15, Tab 17); Annual Report of the Auditor for the Department of the Interior at 3-5 (1912) (Exhibit 15, Tab 18); Annual Report of the Auditor for the Department of the Interior at 7-9 (1914) (Exhibit 15, Tab 13); Annual Report of the Auditor for the Department of the Interior at 4-5 (1915) (Exhibit 15, Tab 14); Annual Report of the Auditor for the Department of the Interior at 4-5 (1916) (Exhibit 15, Tab 15); Annual Report of the Auditor for the Department of the Interior at 3-4 (1919) (Exhibit 15, Tab 17); Annual Report of the Auditor for the Department of the Interior at 3-4 (1920) (Exhibit 15, Tab 18); Accounts of Indian Agents for the Proceeds of Sales of Property Belonging to Indians, 6 Comptroller of the Treasury (Sept. 25, 1889) (Exhibit 8, Tab 1); Annual Reports of the Department of the Interior, at 59-60 (1905) (Exhibit 5, Tab 2).

24. Initially, individual Indian monies were not paid into the Treasury. Rather, they were “accounted for as other funds, and paid, upon proper vouchers, directly to the Indians to whom they belong.” Regulations of the Indian Office Effective April 1, 1904, 52 (1904) (Exhibit 6, Tab 2).

Gradually, as the amount of income grew and policies changed, Interior began to hold more and more money in trust. Accordingly, by 1906, Interior had begun depositing individual Indian monies into private banks. Interior's practice of opening individual bank accounts for Indians was confirmed in 1908, when Congress authorized the Secretary of the Interior to deposit Indian moneys, "individual or tribal, coming into his hands as custodian in such national bank or banks as he may select." Chap. 153, 35 Stat. 70, 73 (Apr. 30, 1908) (Statutory Compilation, Tab 38); see also Chap. 431, Sec. 1, 36 Stat. 855 (June 25, 1910) (Statutory Compilation, Tab 39).

25. In 1913, Interior promulgated what appears to be the first comprehensive set of regulations governing IIM accounts. See Regulations Concerning the Handling of Individual Indian Money (1913) (Exhibit 6, Tab 4). The Regulations confirmed that the IIM accounts were to be accounted for under the Act of July 31, 1894. Id. ¶¶ 45-51, 103. Banks that served as depositories for these accounts were required to render a quarterly statement of each Indian's account.⁹ The disbursing officer was required to check and correct the bank's quarterly statement and then forward that statement, along with the paid checks, to the Auditor for the Interior Department, Treasury Department, Washington, D.C. Id. ¶¶ 154-158.

26. In 1917, BIA developed a new accounting system. See U.S. Department of the Interior, Office of Indian Affairs, Accounting System for the United States Indian Service, 5, 13 (1917) (Exhibit 6, Tab 6). The regulations not only established a double-entry bookkeeping system to ensure greater accuracy in the accounting by BIA, but they also confirmed Interior's practice of submitting the

⁹Attached as Exhibits 10 and 11 are two examples of records showing that Interior received and reviewed quarterly bank statements.

IIM accounts as part of the regular settlement procedure established by the Act of July 31, 1894. The regulations specified that the settlement procedure would encompass all funds held by the disbursing officer, funds at the local banks to his official credit, and all funds on deposit with the Treasury, as well as interest postings by the local banks. See id. ¶¶ 156, 169, 205-206. The regulations also established the new “individual account ledgers,” which, in combination with the check register and journal vouchers, would comprise the official records of activities in IIM accounts. Id. ¶ 190.

27. The settled accounts for this period that still exist today can be located in the National Archives, Record Group 217. See Guide to Federal Records in the National Archives of the United States (Exhibit 9); Decl. of Frank Sapienza ¶ 56 (Sept. 18, 2000) (Exhibit 7).

28. It is impractical to submit each of the settled accounts to this Court for review, given their substantial volume. To understand the significance of these accounts, however, the Defendants attach excerpts of a settled account. Those demonstrate that the Treasury auditors examined each transaction and confirmed that it was supported by the appropriate documentation and properly reflected on the books of the agent. When discrepancies or errors were discovered, they were identified to the agent, who had to correct the discrepancies or errors before the accounts could be settled. See id. ¶¶ 9-25, 57, Attachment A.

29. There is also evidence that the settlement of accounts by Treasury resulted in the review and adjustment of accounts held at private banks for individual Indians. For instance, correspondence between Interior and private banks reveals the statements of the banks were compared with the records maintained by Interior and corrections noted. See, e.g., Letter from Special Disbursing Agent to First National Bank (Feb. 12, 1918) (Exhibit 10) (SEALED EXHIBIT); Letter from Special

Disbursing Agent to Citiz. St. Lawton Oklahoma (Exhibit 11) (SEALED EXHIBIT).

30. Accounting for individual Indian monies changed in 1921, when the Budget and Accounting Act established the General Accounting Office (“GAO”). Chap. 18, 42 Stat. 20, 23-24 (June 10, 1921) (Statutory Compilation, Tab 49). Under this Act, the Comptroller General immediately assumed the duties of Treasury “relating to keeping the personal ledger accounts of disbursing and collecting officers.” *Id.* Sec. 304, 42 Stat. at 24. Thus, GAO began receiving and settling the accounts of disbursing officers, including Indian agents. Decl. of Frank Sapienza ¶ 26 (Sept. 18, 2000) (Exhibit 7). Just like Treasury’s prior settlements, the “balances certified by the Comptroller General [were] final and conclusive upon the executive branch of the Government.” Chap. 18, 42 Stat. at 24.

31. Interior and the Comptroller General both interpreted the Budget and Accounting Act of 1921 as the law governing accounting for individual Indian monies. For instance, in its 1935 bookkeeping regulations, Interior stated:

127. . . . The act of July 1, 1898 (30 Stat., 595), requires that Indian agents shall account for all funds coming into their hands as custodians from any source whatever, and be responsible therefor under their official bonds; and Section 5491 of Revised Statutes prescribes a penalty for failure to render accounts as provided by law. These statutes are construed to embrace funds of every nature which are received in their official capacities by superintendents, disbursing agents, and other employees under their supervision. This includes . . . trust funds . . . in which the Government is financially concerned, which are received by officers or employees in their official capacities. . . .

* * *

128. Accounts will be rendered monthly and must be mailed or otherwise transmitted to the Indian Office within 10 days after the periods to which they relate . . .

Department of the Interior, U.S. Indian Field Service Regulations, Section B - Bookkeeping and

Accounting ¶¶ 127-128 (1935) (Exhibit 6, Tab 9).

32. Pursuant to the Budget and Accounting Act of 1921, disbursing agents would prepare their accounts in accordance with the regulations of Interior and submit those accounts to GAO. The accounts were audited for “compliance with the laws, regulations and decisions governing the expenditure of Indian moneys.” Annual Report of the Acting Comptroller General at 21 (1938) (Exhibit 8, Tab 11). The accountings embraced “both collections and disbursements for the account of the individual Indian.” *Id.*; see also Indian Funds, Letter from the Comptroller General of the United States, 70th Cong., 2d Sess., Senate Document No. 268, at 3 (1929) (Exhibit 8, Tab 8) (“The Indian fiscal agents render to the General Accounting Office a monthly accounting for all funds except as hereinafter set forth coming into their possession on account of the Indians. Schedules of collection are supported with copies of official receipts issued for the moneys collected, and all disbursements are supported by vouchers or other documents showing the expenditures to have been properly authorized. These accounts are audited by the General Accounting Office and the balances reported verified.”).¹⁰

33. Indian agents’ accounts were settled in this manner on a periodic basis through 1950. Decl. of Frank Sapienza, ¶¶ 45, 52 (Sept. 18, 2000) (Exhibit 7); see also, e.g., Letter from Comptroller General Opinion B-22895, at 7 (June 13, 1942) (Exhibit 8, Tab 17); Letter from Comptroller General to Secretary of the Interior (June 20, 1927) (Exhibit 8, Tab 5); Letter from Assistant Secretary of the Interior to Comptroller General (Sept. 13, 1927) (Exhibit 8, Tab 6); Letter

¹⁰GAO did note that “[n]o accounts are required to be kept at the agencies for securities purchased by a superintendent, registered in the name of the individual whose specific funds have been applied to the purchase, even though the securities may be subsequently delivered over to the custody of a superintendent.” *Id.* at 77; see also *id.* at 79.

from Comptroller General to Secretary of the Interior (Oct. 6, 1927) (Exhibit 8, Tab 7); Annual Report of GAO 17-18 (1924) (Exhibit 8, Tab 1); Annual Report of GAO 28-30 (1925) (Exhibit 8, Tab 2); Annual Report of the Comptroller General, 36-37 (1926) (Exhibit 8, Tab 3); Excerpt from the Annual Report of the Comptroller General, 81 (1927) (Exhibit 8, Tab 4); Annual Report of the Comptroller General, 46, 107 (1928) (Exhibit 8, Tab 8); Annual Report of the Comptroller General, 119 (1929) (Exhibit 8, Tab 9); Annual Report of the Comptroller General, 22, 117 (1930) (Exhibit 8, Tab 11); Annual Report of the Comptroller General (1931) (Exhibit 8, Tab 12); Annual Report of the Comptroller General (1932) (Exhibit 8, Tab 13); Excerpt from the Annual Report of the Acting Comptroller General (1938) (Exhibit 8, Tab 14); Decedents, Estates of -- Moneys Due Deceased Indians from the United States, A-95510, 18 Comp. Gen. 412 (Nov. 3, 1938) (Exhibit 8, Tab 15); Excerpt from the Annual Report of the Comptroller General, 99 (1942) (Exhibit 8, Tab 17); Annual Report of the Comptroller General, 50-52 (1943) (Exhibit 8, Tab 18); Annual Report of the Comptroller General, 59, 119 (1944) (Exhibit 8, Tab 19).

34. Interior's regulations specifically addressed the settlement of accounts and required that receipts and disbursements of individual Indian monies be subject to the settlement procedure. See U.S. Department of the Interior, Regulations of the Indian Office, Bookkeeping and Accounting (1927) (Exhibit 6, Tab 7); see also Decl. of Frank Sapienza ¶¶ 27-52 (Sept. 18, 2000) (Exhibit 7).

35. There is no question that the accounts of individual Indians were routinely reviewed and corrected by both Interior and GAO during this time period. For instance, the account of one individual was adjusted in 1940 as a result of the settlement of her disbursing agent's account. Specifically, her 1940 Individual Indian Money Statement reveals two credits, one for \$2.18 and one

for \$8.00. The notation next to these two credits indicates they were made to correct for “Gen Acctg Office Excepn.” See Individual Indian Money Statement (Exhibit 12) (SEALED EXHIBIT).

Consultation with a Journal Voucher makes it clear that these adjustments were the result of the settlement procedure, as the Journal Voucher reflects a credit to the individual “of \$10.18 which was in answer to GAO Exception of Voucher 48-3655-10-134603.” Journal Voucher (Miscellaneous) (June 19, 1940) (Exhibit 12) (SEALED EXHIBIT); see also Decedents, Estates of -- Moneys Due Deceased Indians from the United States, A-95510, 18 Comp. Gen. 412, 413 (Nov. 3, 1938) (Exhibit 8, Tab 15) (reviewing the settlement of a disbursing agent’s account and “sustaining” the disallowance of certain payments to the superintendent as not in compliance with the regulations and law).

36. The settled accounts for this period that still exist today can be located in the National Archives, Record Group 411. See Guide to Federal Records in the National Archives of the United States (Exhibit 9). While it is impractical to submit each of the settled accounts to this Court for review, the Defendants have attached to this Motion excerpts from one of the settled accounts. See Decl. of Frank Sapienza ¶ 57, Attachment B (Sept. 18, 2000) (Exhibit 7).

37. These excerpts demonstrate that the settlement of accounts by GAO involved a detailed procedure for verifying reported transactions by comparison to supporting documentation and correction of errors where necessary. Id.

38. In addition to the regular settlement of accounts, during the period between 1920 and 1951, GAO performed at least one audit of the accounts of the Indian Service, including individual Indian monies. Specifically, between July and December 1928, GAO undertook a study that entailed the inspection of 111 of the 116 agencies, schools, hospitals, irrigation districts, and warehouses of the

Indian field service. Indian Funds, Letter from the Comptroller General of the United States, 70th Cong., 2d Sess., Senate Document No. 268, at 2 (1929) (Exhibit 8, Tab 10).

39. As part of this study, “[t]he accounts of the individual Indians were ‘test checked’” Id. GAO certainly criticized the Indian Service for certain practices, including loose accounting for certain pupils’ monies, id. at 83, and failure to keep adequate records of investments, id. at 116. In addition, GAO identified certain accounting errors that needed to be addressed, see id. at 94.

39. GAO, however, did perform a careful examination of the check registers and disbursements from IIM accounts. Based on that examination, GAO found “[t]he impression prevailed that with few exceptions the disbursements were on the whole reasonable and as a rule made for purposes beneficial to the Indian concerned.” Id. at 104.

40. In 1932, the Senate Committee on Indian Affairs considered a proposal that would require the Commissioner to prepare and submit to the tribes annual statements of activity in the IIM accounts. S. 4187, 72d Cong., 1st Sess. (Mar. 23, 1932) (Exhibit 14).

41. The Commissioner of Indian Affairs objected to S. 4187 for a number of reasons, including insufficient staffing to address an estimated 20,000 individual accounts, stating that for the BIA “to furnish each individual Indian with an annual statement of his personal account would appear to be physically impracticable without an increase in the clerical force.” Moreover, he said, in his opinion, an individual Indian’s account was “a matter between him and the superintendent, who is required by existing instructions to furnish a statement of account to any Indian at any time upon request of the party in interest.” Commissioner of Indian Affairs, Memorandum for the Secretary (May 19, 1932) (Exhibit 5, Tab 6). Congress did not enact the proposed accounting requirement.

42. In 1934, the Indian Reorganization Act was passed. That statute reflected a decision to rebuild tribal communities and governments. Testimony of Kevin Gover, Trial Tr. 860-861 (June 17, 1999) (Exhibit 14). Accordingly, the Indian Reorganization Act provided that “hereafter, no land of any Indian reservation . . . shall be allotted in severalty to any Indian.” Chap. 576, Sec. 1, 48 Stat. 984 (June 18, 1934) (Exhibit 4, Tab 55A).

43. At about the same time, in the mid-1930s, Interior changed its policy regarding account statements. By 1937, superintendents and disbursing agents were also instructed to furnish semiannual statements of receipts and disbursements to each person who had an IIM account. Department of the Interior, U.S. Indian Field Service Regulations, Section B - Bookkeeping and Accounting at B-137 (1935) (Exhibit 6, Tab 9).

44. In 1950, Congress consolidated and standardized the accounting performed by the various executive agencies by passing the Accounting and Auditing Act of 1950. Under this statute, the Comptroller General of the United States was directed to “prescribe the principles, standards, and related requirements for accounting to be observed by each executive agency” Pub. L. No. 81-784, Chap. 946, Sec. 112(a), 64 Stat. 832, 835 (Sept. 12, 1950) (Statutory Compilation, Tab 75). Once established, these standards governed each executive agency’s accounting systems. Id. Sec. 112(b), 64 Stat. at 836. Further, the act authorized the Comptroller General to discontinue GAO’s settlement of accounts. Id., Sec. 117(a), 64 Stat. at 837.

45. In May 1951, the regular settlement of individual Indian disbursing agents’ accounts by GAO was discontinued. Letter from the Administrative Assistant Secretary of the Interior to Comptroller General (May 14, 1951) (Exhibit 8, Tab 20); Letter from the Acting Director, Division of

Budget and Finance to Commissioner of Indian Affairs (June 4, 1951) (Exhibit 8, Tab 21). After this time, individual BIA agencies were required to maintain and settle their own accounts according to the regulations. Id.

Dated: November 20, 2000

Respectfully submitted

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-1285
)	(RCL)
BRUCE BABBITT, Secretary of)	
the Interior, et al.)	
)	
)	
Defendants.)	
_____)	

ORDER

Upon consideration of the motions and papers of counsel, and the record herein, the Court finds that the Defendants were subject to and complied with the requirements for settling accounts of Indian disbursing agents between 1817 and 1951 and that, therefore, the transactions in IIM accounts prior to 1951 have been subject to the accounting required by law at the time. Accordingly, the court HEREBY ORDERS that the Defendants' Third Phase II Motion For Partial Summary Judgment (Re: Settlement of Accounts by Treasury and GAO) is GRANTED and Defendants are not required to account for or reconcile transactions that occurred in any IIM account before 1951.

Date _____

Royce C. Lamberth,
District Judge